

TWO DECADES OF ESTABLISHMENT OF NIGER DELTA DEVELOPMENT
COMMISSION: AN APPRAISAL*

Abstract

The Niger Delta Development Commission, an “interventionist agency” of the Federal Government was established pursuant to the Niger Delta Development Commission Act, 2000 (as amended) which repealed the erstwhile Oil Mineral Producing Areas Development Commission Decree, 1998, purposefully to use the sums received from allocation of the Federation Account for tackling ecological problems arising from the exploration and exploitation of oil minerals in the Niger Delta areas and for connected purposes. A perusal of the Act shows elegant and ambitious objectives aimed at mitigating the harshness of age-long environmental, health and other economic consequences occasioned on the people of the Niger Delta areas through the unsustainable prospecting and production of oil and gas since the discovery of crude oil in commercial quantity at Oloibiri in the present Bayelsa State, in 1956. It is however, regrettable that twenty-three years after its establishment, the Commission has inadequately achieved its objectives as contained in the 2000 Act primarily due to skewed and poor implementation of the Act. This paper therefore, seeks to appraise the implementation of the legal framework establishing the Commission aimed at evaluating its performance in the past two decades and identifying the challenges in robustly implementing the elegant, ambitious objectives, and intendment of establishing the Commission as contained in the NDDC Act 2000 (as amended). The paper found that in practice, there is obvious conflict between law and politics in the implementation of the NDDC Act which ultimately sacrificed the robust objectives of the Act on the alter of politics. The paper made far reaching recommendations amongst which is that the membership of the Commission’s Board should be populated with persons of integrity as required by the Act, against the present practice of being machinery for rewarding political and partisan loyalty.

Introduction

The startling revelation of the Niger Delta Development Commissions Forensic Audit Report that several projects were abandoned or non-existent despite the release of millions of naira for them are a confirmation of the allegations of widespread corruption in the Commission who statutorily is an interventionist agency for the development of the Niger Delta Areas of Nigeria. The financial decadence and rot in the agency is so notorious that a former minister of the Niger Delta Ministry once described the agency as an ATM’ where officials just went to steal public funds.¹ Corroborating this, Premium Times Newspaper reported that Buhari regretted that special development fund of the entire Niger Delta region was squandered by a few for more than twenty years, leaving many in penury.² The Nigeria media is awash with news of monumental corruptions going on in the NDDC³ and there is no doubt that trillions of naira received by the agency since its establishment is at variance with the meager benefits that have accrued to the people of the Niger Delta whom the agency was established to serve.

* **OBASI, MAURICE** PhD, Head of Department of Commercial Law Faculty of Law, Imo State University Owerri, Nigeria. Tel:08032739251. Email: obasimaurice@gmail.com.

****ANYAEGBU-AUSTIN, WILSON CHUKWUDI** PhD Tel: 07062749709. Email: anayachuks72@yahoo.com.

¹ Femi Adesina, ‘NDDC Forensic Audit: Every Kobo will be Recovered, Culprits Punished- Buhari’, *Premium Times Newspaper* (Abuja, 30 December 2021) < <https://www.premiumtimeang.com> > accessed 24 January 2023.

² *Ibid.*

³ Niger Delta Development Commission, hereafter referred to as ‘the Commission.’

It cannot be gainsaid that the NDDC was established to curb the violence and tackle the ecological problems in the Niger Delta, and pursuant to the NDDC Act 2000 (as amended), the Commission is statutorily charged with the obligation of formulating policies and guidelines for the development and rehabilitation of the region; monitoring the activities of oil producing and gas processing companies to ensure compliance with applicable laws and regulations and prevent pollution in the Niger Delta areas where the operations of the oil and gas companies are carried out to the detriment of the people. With the failure of the Commission to achieve the foregoing more than two decades after its establishment, it becomes imperative to undertake a critical review of the legal framework that established the Commission with a view to identifying the implementation challenges and make recommendations for future improvement and strengthening of the Commission for optimal result. It is further hoped that the structure of monumental corruption institutionalized in the Commission would be dismantled, if adherence to the recommendations made by the paper is ensured.

Review of the Legal Framework Establishing NDDC

The Niger Delta Development Commission is a Federal Government Interventionist Agency, established by the Niger Delta Development Commission Act of 2000 (as amended).⁴ This Act repealed the erstwhile Oil Mineral Producing Areas Development Commission Decree, 1998 which established the Oil Mineral Producing Areas Development Commission.

Accordingly, the Act states its purpose thus:

*An Act to Provide for the repeal of the Oil Mineral Producing... Decree 1998, and among other things, establish a new Commission with a re-organized management and administrative structure for more effectiveness; and for the use of the sums received from the allocation of the Federation Account for tackling ecological problems which arise from the exploration of oil minerals in the Niger Delta area and for connected purposes.*⁵

With this robust, elegant and ambitious objective for establishing the Commission, the Act comprises of six parts and thirty-one sections with part I dealing with establishment, etc of the Niger Delta Development Commission and the Governing Board; part II with the functions and powers of the Commission, etc; part III with structure of the Commission; part IV with staff. Part V with financial provisions; and part VI with miscellaneous.

Particularly, the Commission is established as a body corporate with perpetual succession and a common seal; with capability to sue and be sued in its corporate name, having its head office in Port Harcourt and an office established in each Member State of the Commission.⁶

The purpose stated above eloquently shows that the administrative and management structure of the erstwhile Oil Mineral Producing Areas Development Commission was ineffective at delivering the expectation of being the vehicle for the development of the Niger Delta areas who continued to suffer neglect from the Federal Government and remained victims of ecological and health degradation consequent upon the exploration and exploitation of oil

⁴ Nigeria Delta Development Commission (Establishment ETC) Act, No. 6, 2000 (as amended), hereinafter referred to as 'the NDDC Act', *Section 1*.

⁵ See generally the Long title to the Act.

⁶ The NDDC Act, *Section 1*.

minerals in the area. The Niger Delta Development Commission was therefore, established to fill the gap aforesaid.

Pursuant to the NDDC Act, the following are the States that make up the membership of the Commission *viz*: Abia, Akwa Ibom, Bayelsa, Cross Rivers, Delta, Edo, Imo, Ondo and Rivers States respectively.⁷ A governing Board is created by the Act, whose chairmanship and other membership are appointed by the President and Commander in Chief of the Armed Forces, and confirmed by the Senate in consultation with the House of Representatives.⁸ The Act mandates that the chairman and other members of the Board shall be persons of proven integrity and ability.⁹ This prerequisite of integrity and ability as a condition precedent for appointment into the Governing Board of the Commission is very commendable and the legislative intention must be to ensure that persons of unquestionable character and competence are appointed into this position of trust in order to achieve the purpose of establishing the Commission.

The radical implication of *section 2(2)(b)* of the Act, is that appointment into the Board should not be anchored on political and partisan loyalty but on competence and integrity. It is however, regrettable that since the establishment of the Commission, the elegant provision of *section 2(2)(b)* has been politically compromised as appointments into the Board have been absolutely based on political and partisan loyalty. This therefore, implicates a conflict between law and politics in which politics has prevailed and law subordinated. The consequence of this has continued to be a perennial nightmare and the bane of the Commission for over twenty years of its establishment. This state of affairs agitates the question: “has the purpose of the Act been achieved”? Considering that part of the purpose of the Act is to establish a new Commission with a re-organized management and administrative structure for effectiveness ..., and with obvious observance of *section 2(2)(b)* in breach rather than in compliance, the obvious answer to the above question is “absolute no”. Rather than having a commission with effective management and administrative structure that would deliver the purpose of establishing the Commission to the people of the Niger Delta, what exist in NDDC since inception is a regime of appointing stooges of the Presidency, the National Assembly and Governor into the Governing Board of the Commission in flagrant breach of *section 2(2)(b)* of the Act. The Commission therefore has remained a conduit pipe through which billions of naira is misappropriated contrary to the ecological and developmental purposes for which these funds were earmarked.

For purposes of appointment of the chairman of the board, the Act provides that the office of the chairman shall rotate amongst the member states of the Commission in alphabetical order of Abia, Akwa Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers States respectively.¹⁰

This provision ensures equity, fairness and natural justice and as such no State would be short-changed in the appointment. The Act also provides for 4 year tenure for a member of the Board other than an ex-Officio member. At the expiration of 4 years, such member may be reappointed for another term of 4 years.¹¹ The Act provides that where a vacancy occurs in the membership of the Board it shall be filled by the appointment of successor to hold office for

⁷ NDDC Act *Section 2(1)(b)(i-ix)*.

⁸ *Ibid*; *Section 2(1)(2)*.

⁹ *Ibid*; *Section 2(2)(b)*.

¹⁰ *Ibid*; *Section 4*.

¹¹ *Ibid*; *Section 3(1)*.

the remainder of the term of office of his predecessor. The successor shall represent the same interest and shall be appointed by the President subject to confirmation of the Senate in consultation with the House of Representatives”.¹²

This paper notes that while the Act vests the appointing power of the membership of the Board on the President and Commander in Chief of the Armed Forces, subject to confirmation by the Senate in consultation with the House of Representatives, nowhere in the Act, was the President vested with the power to dissolve the Board at his whims and caprices and in its stead constitute an interim management team whether in the form of sole administratorship or otherwise. Contrary to this, the year 2019 to January 2023 witnessed exercise of presidential impunity by Buhari; that saw to the setting up of an interim management team and subsequently a sole administratorship even at the wake of confirmation of the appointments of the chairman and other members of the Board by the Senate on the 5th November 2019, as sent by the President. The President contrary to the Act, disbanded the NDDC Board confirmed by the Senate before their inauguration. According to the Guardian Newspaper, this was effected through a presidential letter to the Senate part of which is reproduced below:

After the dissolution of the Board of NDDC an interim management team was set up to manage the affairs of the Commission before a new board was composed and sent for Senate’s confirmation”. “The Senate is invited to note that after the process of composition and the Senate’s confirmation was ongoing, I directed that the forensic audit of the board be carried out which is being overseen by the interim management team”. “Based on this and in order to allow for uninterrupted process of the forensic investigation the Board appointment confirmed by the Senate has to be put on hold to allow the interim team continue to manage the Commission pending the outcome of the forensic audit.”¹³

While the President’s intention to conduct a forensic audit of the Commission’s activities is commendable, such must be pursued in accordance with the rule of law. Refusing to inaugurate the Board even after confirmation of same and in its stead constituting an interim management team is a procedure unknown to the NDDC Act and at best can be described as reckless use of presidential powers of appointment as vested by the Act. This is another instance of conflict between law and politics in which politics made law subservient, depicting a society where might takes precedence against the law. It is on record that the NDDC Board remained unconstituted until 5th January, 2023 when a new Board was inaugurated. In a similar vein of exercise of presidential impunity, Tinubu dissolved the board as constituted by Buhari and reconstituted another on the 29th August 2023.¹⁴

The Act provides for the functions and powers of the Commission and accordingly it is obligated among other things to:

- a) Formulate policies and guidelines for the development of the Niger Delta area;
- b) Conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger Delta area in the field of transportation including roads, jetties and water ways, health, education, employment,

¹² *Ibid*; Section 5(3).

¹³ John Akubo, ‘Buhari Disband NDDC Board Confirmed by Senate Before Inauguration’ *The Guardian Newspaper* (Lagos, 28 January 2020) <<https://guardian.ng>> accessed 26 January, 2023.

¹⁴ See Vanguard Newspaper of August 29, 2023: ‘President Tinubu Appoints New Board, Management of NDDC.’

- industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;
- c) Cause the Niger Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development;
 - d) Prepare master plans and schemes designed to promote physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes;
 - e) Implement all the measures approved for the development of the Niger Delta area by the Federal Government and the member States of the Commission;
 - f) Identify factors inhibiting the development of the Niger-Delta area by oil and gas producing companies and any other company including non-governmental organizations and ensure that funds released for such projects are properly utilized;
 - g) Tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger Delta area and advise the Federal Government and the member States on the prevention and control of oil spillages, gas flaring and environmental pollution;
 - h) Liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control;
 - i) Execute such other works and perform such other functions which in the opinion of the Commission are required for the sustainable development of the Niger Delta area and its peoples.¹⁵

The Board therefore, is vested with the following powers, viz:

- a) To manage and supervise affairs of the Commission;
- b) To make rules and regulations for carrying out the functions of the Commission;
- c) To enter and inspect premises, projects and such places as may be necessary for the purpose of carrying out its functions under this Act;
- d) To pay the staff of the Commission such remuneration and allowances as appropriate;
- e) Enter into such contracts as may be necessary or expedient for the discharge of its functions and ensure the efficient performance of the functions of the Commission;
- f) To do such other things as are necessary and expedient for the efficient performance of the functions of the Commission.¹⁶

This paper notes that the lofty functions of the Commission as provided in *section 7 supra* is summarily captured in the NDDC's mission-vision' statement which is aptly stated below:

*To offer a lasting solution to the socio-economic difficulties of the Niger Delta region and to facilitate the rapid and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful.*¹⁷

Pursuant to *section 7(d)* of the Act, a master plan was designed to offer stakeholders at all levels full participatory opportunity in the planning and decision-making process. Accordingly, the master plan is conceived as a tool that the millions of the Niger Delta region can use to actualize their common vision and build their future to the standard they desire.¹⁸ The master plan covered areas like: environment and hydrology, agriculture, biodiversity, transport, rural urban regional planning and housing, community development, health, among others. This paper

¹⁵See generally *section 7* of the Act.

¹⁶*Ibid*; *Section 8*.

¹⁷Niger Delta Development Commission: 'Mission-Vision'; <infoenadc.gov.ng> accessed 28 January, 2023.

¹⁸*Ibid*.

notes that while on paper the master plan is conceived to engender the participation of stakeholders at all levels (both the low and the mighty in the Niger Delta region), this is never to be in practice as the process of decision making is hijacked by local, political and community leaders' who advance and pursue their personal interests cloaked in perceived community and general interest of the Niger Delta region. The result of this is that the NDDC master plan has failed to adequately live up to its expectation as the Niger Delta region especially the host communities of petroleum industries in Nigeria still remain shadows of themselves both in terms of economic and social development. These communities have continued to suffer untold hardship from loss of livelihood, health hazards, environmental degradation, among others occasioned by the unsustainable exploration and exploitation of crude oil evidenced by persistent oil spillages and gas flaring by the oil and gas companies contrary to international best practices. It therefore follows that the Commission has failed in its statutory duty to give full effect to the extant provisions of *section 7* of the Act. This fact is further buttressed by Akpabio, the former minister of the Niger Delta Ministry when he stated that the NDDC has not lived up to expectations. According to him: "Whether we like it or not this child (NDDC) has not grown well in 19 years. It could have done better. Perhaps we lost track of the developmental plan of the Niger Delta region."¹⁹

According to Premium Times, quoting a report by the Nigerian Extractive Industries Transparency Initiative (NEITI) on revenues, deductions, disbursements, and application of Funds by the NDDC, N59.8 billion was awarded for contracts' in Delta State between 2007 and 2011. Out of this sum ₦1.37 billion was supposedly spent on water projects within the period in reference. The report further noted that NDDC's 2006 Appropriation Act also shows that ₦28 billion was approved for projects in 2015 while ₦25 billion was approved in 2016. According to the newspaper report, of the twenty water projects commissioned by the Commission, seven projects listed as 'completed' were not executed, five were abandoned, five were completed and still in use, while three were completed but were no longer functional.²⁰ This report exposes one out of the many similar state of affairs of institutionalized corruption in the Commission responsible for its failure to observe the provision of *section 7* in compliance. The radical implication is that the people of the Niger Delta are left to continue in perennial anguish while their common wealth is corruptly misappropriated with impunity. Reacting to the Forensic Audit report the President and Commander in Chief of the Armed Forces, sadly stated: "every kobo will be recovered, culprits punished".²¹ It is however, regrettable that this statement was not matched with action as there was no recorded recovery of these funds while he remained in the saddle as President. The forensic report revealed how several NDDC projects were abandoned or non-existent despite the release of millions of naira for them.

Appraising the Implementation of the NDDC Act in the Past Two Decades

Section 7 and *8* of the NDDC Act, provide as noted *supra* for the functions and powers of the Commission respectively. Pursuant to these *sections*, this paper appraises in this part the relevant implementation of the Commission's functions and exercise of its powers in the past two decades in the Niger Delta areas under the following subheads:

¹⁹Tunji Onyeyemi, 'NDDC Needs New Master Plan for Niger Delta Development-Akpabio', *Federal Ministry of Information and Communication* (Abuja, 28 September 2020) <<https://fmic.gov.ng>> accessed 28 January, 2023.

²⁰ Chinwe Agbeze, 'Investigation: NDDC Paid Millions for Non-existent, Abandoned Delta Water Project (1) *Times Newspaper* (Abuja, 24 May 2020) <www.premiumtimesng.com> accessed 28 January, 2023.

²¹Adesina, NDDC Forensic Audit, *Premium Times*, (n 1).

Transportation

In line with the Commission's mandate to conceive, plan and implement in accordance with set rules and regulations, projects and programs for the sustainable development of the Niger Delta area in the field of transportation including jetties and water ways, credible evidence abound on the commission's award and successful execution of various projects in the field of transportation since its birth in the past two decades. Such projects include but not limited to:

- i) **NDDC Mass Transportation Scheme:** This scheme was introduced by the Commission in 2003. The Commission bought and distributed buses to beneficiaries in the Niger Delta communities for purposes of alleviating the transportation needs of the people and also provide a veritable source of income to the beneficiaries. It is however regrettable that presently, hardly are these buses seen plying the roads suggesting that the projects were either poorly thought out or lacked implementation sustainability. A major reason for this state of affair is that the distribution of these buses was largely influenced by the political class who used same to settle their loyal members, rather than giving the buses to deserving members of the communities that honestly need the buses as economic empowerment and ready to sustainably use same for lasting transportation business.
- ii) **Road Projects:** The Commission is reputed to have awarded many road contracts in the Niger Delta areas. While some of these roads were completed, majority were either abandoned or poorly constructed below design specifications thereby defeating the aim of the projects and occasioning more harm to the transportation needs of the people, who require good network of roads for easy transportation of goods especially agricultural produce from their farms. Credible evidence abound where communities issue threats to shut down facilities of oil companies because of abandoned NDDC road projects in their areas. According to Sun Newspaper, the host communities to Eriemu Oil Field, in Ughelli North Local Government Area of Delta State issued a 30-day ultimatum to shut-down all oil installations should the NDDC fail to mobilize the contractor for the 111km road abandoned since 2010. Quoting the communities the Newspaper reported thus:

We have written several letters to NDDC, yet they have continued to give deaf ears to our plight. In June last year, we did a peaceful protests over the non-completion of the road... As we speak, we have not heard from NDDC and the State Government. Last month, we issued a one month ultimatum to NDDC to get the contractor to return to site or we will be left with no option than to shut down all the oil facilities in our land.²²

This paper notes that the above development is at variance with the spirit and letter of the NDDC Act that established the Commission to among other things address the developmental challenges of the people of the Niger Delta.

- iii) **Dredging and Re-Dredging of Canals:** NDDC has also embarked on contracts for dredging and re-dredging of canals to ease water transportation in the riverine communities of the Niger Delta. As it is the tradition of the Commission, while some have been successfully completed some are either abandoned or done below

²² Paul Osuji, 'Delta Communities Threaten to Shut Oil Installations over Abandoned NDDC Road Project', *The Sun Newspaper* (Lagos, 17 May 2023) <<https://sunnewsonline.com>> accessed 20 May, 2023.

specified engineering standards. According to Vanguard Newspaper, the Commission embarked in a contract of over 4.3 billion naira re-dredging and re-alignment of Araomi/Iwoye canal in the riverine area of Ondo State²³. This project as conceived was expected to benefit over 200 communities.²⁴

- iv) **Rail Project:** The import of a rail network connecting the States of the Niger Delta cannot be over-emphasized. To this end, the Commission has proposed a Niger Delta Rail Network and recently signed a Memorandum of Understanding (MoU) worth, 15 billion dollars between it and Atlantic Global Resources of Atlanta, Georgia, USA. According to the Vanguard Newspaper, the Memorandum of Understanding is for the construction of a railway network that will cover all the nine States of the Commission.²⁵ It is not doubtful that this project if implemented will positively impact on the economic development and social integration of not just the people of the Niger Delta, but that of Nigeria as a whole. Highlighting on the importance of this project, the Vanguard Newspaper stated:

*Definitely the implementation of such an ambitious project will bring much economic development and social integration for which railways are famous all over the world. It will attract a lot of investment and reduce youth unemployment and restiveness in the nation's oil producing region.*²⁶

The Newspaper further stated that the completion of the project will have a liberating effect on the region as it will no longer be just an area to exploit and abandon.²⁷ It must be noted that while the people of the Niger Delta may have been rejoicing for the good development in the history of the Commission, this joyful mood may be very transient considering the dissenting position of the, immediate past chairman of the NDDC Governing Board, who without equivocation alleged that the NDDC Rail Network contract MoU signed by the immediate past Managing Director is illegal, shady and dubious. The erstwhile chairman therefore, declared the agreement as null and void.

According to the Vanguard Newspaper:

*The Chairman, Governing Board of the Niger Delta Development Commission (NDDC) has described as illegal, dubious" and of no effect the Memorandum of Understanding signed between the Commission and the United States (US) firm Atlanta Global Resources incorporate (AGRI) for a rail project in the Niger Delta.*²⁸

²³ Dayo Johnson, 'Nigeria: NDDC Warns Contractors over Re-Dredging Project' *Vanguard Newspaper* (Lagos, 8 June 2003) <allafrirea.com> accessed 20 May, 2023.

²⁴ *Ibid.*

²⁵ Editorial 'Proposed Niger Delta Rail Network', *Vanguard Newspaper* (Lagos 2 May, 2023) <<https://www.vanguardngr.com/2023/05/proposed.niger.delta.rail.network/>> accessed 20 May, 2023.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Egufe Yafugborhi, 'Row over 15 Billion Dollar NDDC, U'S Firm Rail Project MOU' *Vanguard Newspaper* (Lagos 29, April 2023) <<http://www.vanguardngr.com/2023/04/row.over.15bn.nddc.us.firm.rail.project.mou/>> accessed 20 September 2023.

The strong rebuttal of the erstwhile chairman of the NDDC Governing Board on the purported rail project was premised on the fact that the contract was a duplication of contract already signed by the Federal Government and that the US company is not only incompetent to handle such a project but that the Directors are unknown. The inference this paper draws from the rebutted by the erstwhile chairman of the Commission's Board on the legality of the Memorandum of Understanding signed by the Commission's Managing Director with the United States firm, is that it was signed without the approval of the Board. This therefore, agitates the question whether the Managing Director is vested with such sweeping powers by the NDDC Act, to sign such contract without the approval of the Board. A perusal of *section 8* of the NDDC Act, shows that it is the Governing Board of the Commission that is vested with powers to enter into such contract as may be necessary or expedient for the discharge of its functions and ensure the efficient performance of the functions of the Commission, and to do other things as are necessary and expedient for the efficient performance of the functions of the Commission.²⁹

Pursuant to section 12(2), the Managing Director shall, subject to the general direction of the Board, be responsible:

- (a) For the day, today administration of the Commission;
- (b) For keeping the books and proper records of the proceedings of the Board; and
- (c) For-
 - (i) The administration of the secretariat of the Board and
 - (ii) The general direction and control of all other employees of the Commission.

The combined effect of *sections 8(e)* and *12(2)* is that the Managing Director lacks the power to unilaterally sign a Memorandum of Understanding of the purported rail project with a US firm without the approval of the Governing Board. His action therefore smacks of exercise of impunity and a crass violation of the NDDC Act, 2000 (as amended) and consequently an illegality as declared by the immediate past chairman of the Governing Board of the Commission. This paper therefore submits that considering the great economic and developmental gains of the rail project, necessary due process should be activated by the present Board as constituted by Tinubu to lawfully contract with a competent firm for the execution of this all important socio-economic contract and ensure it is not extinguished on the alter of politics and internal administrative rift.

- v) **Erosion Control Projects:** Available evidence shows that the Commission has executed many erosion control projects alongside the numerous road projects embarked upon by it thereby opening up and connecting communities for various grassroot socio-economic developments. Among these projects include the 2.5km Mbodo-Aluu Link Road and construction of storm water drains and erosion control in Rikpokwu community Obio-Akpo Local Government Area

²⁹ See NDDC Act, Section 8 (e) and (f).

of Rivers State,³⁰ Road and Erosion Control on Hospital Road,³¹ a major road in Abak Local Government Area of Akwa Ibom State originally ravaged by gully erosion which made life miserable for the people. Most recently, the Commission has promised speedy intervention to urgently restore the Akinima-Joinkarama road badly destroyed by gully erosion.³² According to the NDDC, this road links several communities in Ahoada West Local Government Area in Rivers State.³³ While the NDDC has promised immediate remediation works on the damaged road, the community through its leader did not hide their disappointment over the deplorable level of environmental degradation, poverty and neglect in the area. According to him this is the plight of the area despite being host to many oil wells”.³⁴

- vi) **Environmental Projects:** While this paper could not find any visible collaboration by the Commission with the relevant oil and gas companies to stem the tide of oil spillage, gas flaring and even soot pollution ravaging the host communities of petroleum industries in Nigeria, it however identified piecemeal involvement of the Commission in environmental projects such as ceremonial tree planting aquatic marine litters clean up on world’s environment days.³⁵ This is not only disappointing but a sad commentary considering the environmental expectation and functions of the Commission pursuant to *section 7* of the 2000 Act (as amended). While the importance of tree planting cannot be gainsaid considering the fact that as carbon sinks they stand out in mitigating ozone layer depletion and climate change, the tree planting exercise is ridiculed in Nigeria to mere political fanfare on every ‘world environment day’ where heads of Ministries, Departments and Agencies roll out their drums in colourful display to mark the day which is usually climaxed with the tree planting ritual after which it ends there. It is disappointing that two decades of existence of the Commission has not recorded bold environmental interventionist programme aimed at tackling ecological and environmental problems that arise from the exploration and exploitation of oil mineral in the Niger Delta areas.³⁶ The unabated scourge of oil spillages, and gas flaring are unequivocal evidence that the Commission has not done well in liaising with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control as required by the Act.³⁷ The critical role the Commission is required to play by the 2000 Act in matters of pollution prevention and control from the operations of oil and gas companies is not intended by the Act to be merely advisory but synergistic which informed the inclusion of one representative of oil producing companies nominated by these companies in the

³⁰ Dennis Naku, ‘NDDC Inaugurates Erosion Contract Projects in Rivers’, *Punch newspaper* (Lagos, 23 September 2022) <<https://punchng.com/nddc-inauguration/>> accessed 4 July, 2023.

³¹ Correspondent, ‘NDDC Speeds up Work on Road, Erosion Control in Abak’ *Independent Newspaper Nigeria* (Lagos, 20 June 2018) <<https://independent.ngsnde-speed/>> accessed 4 July, 2023.

³² Ibitoye Adosede, NDDC Promises Speedy Intervention on Erosion-Ravaged Road in Rivers, *NDDC News Detail* (Port Harcourt, 11 June 2023) <https://www.nddc.gov.ng/newsdetail/>> accessed 4 July, 2023.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Ibitoye Abosede, ‘NDDC Harps on Restoring Niger Delta Environment,’ *Facebook* <<https://m.facebook.com/posts/nddc/>> accessed 4 July, 2023.

³⁶ See generally section 7(1)(h).

³⁷ See generally section 7(1)(i).

Niger Delta as a member of the Commission's Governing Board.³⁸ The Commission by the Act therefore, has a duty to boldly partner with the relevant agencies of government like NOSDRA³⁹ in matters of environmental protection to ensure that the operations of oil and gas companies in the Niger Delta are carried out in accordance with international environmental best practices to prevent both oil spills and gas flaring in the Niger Delta and where spill inevitably occurs, that immediate clean up and remediation operations are activated by the polluter company in order to return the impacted site to use, and compensation paid to victims.

- vii) **Shore Protection Projects:** The Commission has to its credit embarked and completed some shore protection projects which also assisted in tackling coastal erosions. Presently on-going is the Reclamation and Shore Protection Project at Opuoma, Ohaji/Egbema Local Government Area in Imo State.⁴⁰
- viii) **Medical Intervention Scheme:** The Commission in the past had embarked on medical intervention scheme for the people of Niger Delta. This scheme offered the opportunity for the people to access free and quality medical service at the instance of the Commission. The Commission through its free medical outreach programme touched the lives of many that had medical challenges but were unable to afford the cost of such services. This innovation saved the lives of many who may have died but for the medical intervention by the Commission. However this programme has not ran continuously for the benefit of the people. The Commission has recently promised to reactivate the free medical outreach programme having been captured in the 2023 NDDC's budget.⁴¹
- iv) **Youth Development Scheme:** The Commission recently has put in place plans to jettison the old practice of the youth being at home doing nothing and receiving stipends. To this end the Commission is proposing to establish a Niger Delta Chamber of Commerce⁴² which it would collaborate with in the training of youth and intending entrepreneurs. According to the Commission, the existing NDDC Youth Volunteer Programme will be changed to Youth Internship Programme.⁴³

In this new programme, youths will be attached to organizations to learn skills for a year at the end of which they are empowered to stand on their own and work for the benefit of the society. According to the Commission, the choice of setting up a Niger Delta Chamber of Commerce is to ensure that this laudable capacity and empowerment programme of the Commission remains sustainable. This paper notes that this philosophy of sustainability of youth development

³⁸ See generally section 2(1)(d).

³⁹ National Oil Spills Detection and Response Agency.

⁴⁰ NDDC PMIS Public Portal, Health Safety Environment/Environmental Management Plan (Hse/Emp) Monitoring of Reclamations and Shore Protection at Opuoma, Imo State; <pmis.nddc.gov.ng> accessed 6 July 2023.

⁴¹ Dennis Naku; 'NDDC to Resume N'Delta Free Medical Scheme', *Punch Newspaper* (Lagos, 4 June 2023) <<https://punhng.com/n...>> accessed 11 July, 2023.

⁴² Ibotoye Abosedo, 'NDDC Adopts New Youth Development Scheme', *NDDS News Details* <nddc.gov.ng> accessed 11 July 2023.

⁴³ *Ibid*

programme is very commendable as there has been NDDC skill acquisition programme of this nature in the past but could not be sustained. The Commission while speaking through its Managing Director in a stakeholders engagement forum held in Port Harcourt acknowledged that it had done certain things in ways that are bereft of sustainability and pledged for change going forward.⁴⁴ The youths were further assured that this new innovation is already incorporated into the Commission's 2024 budget.⁴⁵ It is the opinion of the paper that beyond 2024 budget, subsequent budgets of the Commission should provide for this programme to entrench and assure its sustainability.

Implementation Challenges

- a) **Misapplication of section 12(1) of the Act:** This *section* is to the extent that there shall be a Managing Director and two Executive Directors who shall be indigenes of oil producing areas. By the provision of this *section*, the appointment of the trio are to start from the member States with the highest production quantum of oil and shall rotate amongst member States in the order of production. While the intendment of the Act by a direct literal interpretation of this *section* would be that of ensuring equity and participation of all the member States in occupying these plum positions starting from the States with the highest quantum of production, it could not have been the contemplation of the Act to domicile these offices in particular selected States thereby making it impossible for other member States to benefit. It is however, regrettable that but for the immediate past Board of the NDDC dissolved by Tinubu,⁴⁶ which has Executive Director projects from Ondo State, these three Directors have continued to be populated with persons from Rivers, Bayelsa, Delta and Akwa Ibom States to the exclusion and detriment of other member States since establishment of the NDDC.

This paper notes that the inclusion of Ondo as part of the trio of these directors which constitute the executive management board of the Commission is not unconnected with the ongoing litigation where interested parties from Ondo States challenged this inequitable and artificial constitution of the executive management board of the NDDC since its establishment and demanded the position of the Managing Director of the Commission. In the suit, *Ilaje Advancement Forum & Anor v AG Federation & ors*, the Plaintiffs maintained that pursuant to *section 12(1)* of the Act, "the appointment into the role of Managing Directors is rotational among member states"⁴⁷ but that it has been continuously held by the South South region of Rivers and Akwa Ibom States and demanded that it was time for the position to be held by an indigene of the oil producing area of Ondo State pursuant to *section 12(1)* of the Act.

This paper submits that this practice of excluding other member States contrary to *section 12(1)* is an affront on the tenets of rule of law and moreso breeds frustration and aggression as manifestly justified by the suit of the aggrieved parties from Ondo State, and capable of clogging the wheel of effective and efficient service delivery by the Commission to the people of the excluded oil producing States, as they may be denied the opportunity of locating critical infrastructural and developmental projects in their areas.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Current President and Commander in Chief of the Armed Forces Federal Republic of Nigeria.

⁴⁷ Wondrous Nnaemeka, 'Oil Producing communities: Falana Asks Court to Replace NDDC Director with Ondo Indig' *The Whistler* (13 April 2022) https://thewhistler.ng/oil_producin...? Accessed 1 July, 2023.

Settlement and/or compensation for Political Loyalty

From appointment of the Governing Board of the Commission, award of contracts, beneficiaries of the transportation schemes amongst others it has usually been about settlement of loyalists by political leaders who call the shot in both the national and state polity. Consequent upon this, hardly are the relevant laws invoked to punish these persons when they fail to execute the contracts or live by the terms of the schemes for which they are beneficiaries. Most contracts are awarded to politicians and board members through proxies which are later abandoned or poorly executed contrary to designs and specifications even after receiving the full contract sum.

Exercise of Executive Impunity

As noted earlier, the Governing Board of NDDC was dissolved by the Buhari's administration and in its interim an interior management team and subsequently a sole administrator appointed to run the affairs of the Commission contrary to the extant provision of the Act. In January 2023, the Governing Board was reconstituted by the same administration only again to be dissolved by the Tinubus administration in June 2023 contrary to the provision of the Act. The Act did not contemplate that the President would freely constitute and dissolve the governing board of the Commission at his whims and caprices thereby occasioning clogs in the wheel on smooth and seamless implementation of developmental plans and policies of the Commission which lead to administrative inconsistencies and ultimately affect project executions. This culture of wanton dissolution of the NDDC Governing Board is not only condemnable but a deliberate exercise of executive impunity to serve personal political purpose to the detriment of the general good of the people of the Niger Delta.

Delay in Budget Approval

The delay usually experienced in approval of the Commission's annual budget constitutes a source of worry to the smooth running of the Commission. The 2023 NDDC budget for instance was approved on 16th May 2023, approximately six months into the new financial year. This state of affairs affect smooth planning and implementation of projects by the Commission which affects service delivery to the people. The point was inferred by Lawan during the budget approval by the Senate when he stated that the budget approval exercise was "very expedient in order not to let the people of the region suffer from further delays".⁴⁸ How expedient is a budget approval that came almost towards the second half of the year?

Corruption

Generally viewed as the misuse of public office for private gains, this has remained a malaise that has impacted negatively on the performance of most public institutions in Nigeria, NDDC not exempted. The litany of abandoned projects and those delivered below engineering design specifications, and failure of the Commission to frontally stand on the side of environmental protection of the Niger Delta areas from the various environmental degradations arising from the operations of the oil and gas compromises are all pointers of obvious comprises from the statutory responsibilities of the Commission which evidences corruption by those saddled with the obligation of implementing the letters and spirit of the 2000 Act (as amended). Appointments into the Governing Board of the Commission often are not premised on merit but on parochial political interest and loyalty. To this end the board has a history of being populated with persons who serve the interest of the political leaders that influenced their

⁴⁸ Sunday Aborisade, 'Senate passes N8766n NDDC 2023 Budget' *Thisday* (Abuja, 17 May 2023) <<https://www.thisdaylive.com/senat...>> accessed 3 July, 2023.

appointments than service for public interest. This largely affects the performance index of the Commission as brazen impunities by the personnel of the Commission go unpunished because the veiled interests of political leaders behind their appointments must be protected thereby breeding a culture of lack of transparency, accountability and zero observance of the tenets of rule of law in the administration of public funds.

This state of affair is justified by the lamentation of a former Minister of the Niger Delta Ministry when according to Premium Times Newspaper, described the Commission as an 'ATM' where officials just went to steal public funds.⁴⁹ Also Buhari, while commenting on the financial wrath as revealed by the forensic audit of the Commission ordered by him, regretted that special development funds of the entire Niger Delta region was squandered by a few for more than two decades, leaving many in penury.⁵⁰ While he threatened that every kobo misappropriated must be accounted for it is however regrettable that the threat ended up being the usual window dressing of government as no proactive step was taken by his regime to bring those behind the misappropriation of the Commission's fund as revealed by the audit report to book before he exited power on 29 May 2023.

Unsustainable Implementation of Laudable Developmental Schemes/ Programmes:

In the past the Commission has initiated very laudable developmental schemes for economic, health and social growth of the people of the Niger Delta among which include: NDDC transport scheme, free medical scheme, skill acquisition schemes among others.

While these schemes are reputed to have started well, it is however, unfortunate that they were unsustainably managed leading to their collapse at one time or the other. The managing director of the Commission acknowledged this fact during a stakeholders engagement forum held in Port Harcourt, when he stated that the Commission had done certain things in ways that were unsustainable and promised a change.⁵¹ This is contrary to the principle and philosophy of sustainable development which according to Atsegbua *et al* is development that meets the needs of the present generation without compromising that of future generations.⁵²

When good developmental schemes are initiated and suddenly extinguished, it does not allow for economic growth and development and resources committed to such schemes become redundant and idle and on the long run become wasted.

Award of Contracts to Incompetent Contractors

Contracts award in NDDC is usually politically driven. To this end majority of the contracts are not based on contractors and capability but on political expedience. Consequently more of the jobs are either abandoned or poorly executed and sometimes do not even exist as the contracts may have eloped with the money paid. The Times Newspaper report on nonexistent and abandoned Delta Water projects⁵³ eloquently justifies this point. This erodes the statutory objective of establishing the Commission.

Youth Restiveness and Disruption of Project Implementation

Youth in some beneficiary communities sometimes impose different forms of humongous levies on contractors before such projects are allowed to be implemented. Sometimes they go

⁴⁹ Femi Adesina, NDDC Forensic Audit..., (n1).

⁵⁰ *Ibid.*

⁵¹ Abosede, (n 42).

⁵² Lawrence Atsegbua et al, *Environmental Law in Nigeria: Theory and Practice*, (New edn, Benin, AMBIK Press, 2010), 68.

⁵³ Agbeze, 'Investigation: NDDC paid Millions for...', (n 20).

as far as being violent around the project sites thereby disrupting smooth implementation of the projects; occasioning undue delays in delivery time; and where they destroy on-going projects add to the cost of the projects as more funds would be injected to restore the damage caused.

Display of Indifference over Government Projects

Some beneficiary communities display indifference over the projects sited in their areas as nobody's project. This attitude sometimes give the room for some unscrupulous contractors to execute the Commission's project contrary to design specifications since the community stakeholders to not follow up and supervise the implementation of these projects to ensure that the contractors are executing according to design specifications. This is crass manifestation of ignorance and obvious lack of patriotism as these projects are to serve these communities and not the government thereby imposing both legal and moral duties on the community that the projects are not only executed but done according to engineering design specification for sustainability.

Conclusion

The development trajectory of the Niger Delta area from the year 2000 pursuant to the establishment of the Niger Delta Development Commission, an interventionist agency of the Federal Government has been chequered. From records populated with successful project implementation, abandonment and sometimes outright non-existent of fully paid projects, it becomes literally difficult to assess the Commission standing in terms of unequivocally issuing a score card that may be adjudged above average. A dispassionate appraisal of the Commission's performance *vis-à-vis* its functions as spelt out in *section 7* of the 2000 Act as amended would grossly indict the Commission as having performed below expectations especially with regard to tackling the ecological and environmental problems of the Niger Delta arising from petroleum prospecting and operations of the oil and gas companies. While the Commission would be commended for various road and erosion contra projects executed in the past two decades, same will not be the case for the various abandoned projects and even non-existent ones fully paid for principally due to unbridled and brazen corruption that has perpetuated in the Commission as a result of political influence and expediencies. The closest approximation to positive expectation of a reformed Commission would have come from the statement of Buhari when he remarked that every kobo stolen as revealed in the forensic audit of the Commission would be recovered and the perpetrators punished. More assurances came the way of the waiting Nigerian public when the immediate past Chairman of the Governing Board of the Commission, inaugurated January 2023 made pragmatic promises of changing the old order in the Commission. However, the question is: have these hopes and assurances been dashed, considering that the new administration of Tinubu dissolved this Board and reconstituted a new one? With the identified challenges by this paper staring at the New Board as reconstituted by Tinubu, this paper notes that with a strong political will the problems of the commission are not absolutely insurmountable.

Recommendations

1. Application of the provision of the NDDC Act (2000 as amended) must be done devoid of undue political influence and pressure both in appointments and location of projects to reflect equity amongst the nine States.
2. Appointments into the Governing Board of the Commission should be based on character competence and capability to ensure that the objectives and functions for which the Commission is established is not compromised on the altar of politics.

3. The President should refrain from exercise of executive impunity and abide by the tenets of constitutionalism and rule of law especially with regard to constitution and dissolution of the Governing Board of the Commission. To this end, the tenure of the Board must not be determined at the whims and caprices of the President of the Federal Republic of Nigeria but by the relevant provisions of the NDDC Act (2000 as amended).
4. For prompt delivery of the Commission's projects, its annual budget is recommended to be passed before the end of every financial year to avoid instances where budgets are passed midway into a new financial year like that of 2023 passed on May 2023.
5. To stem the tide of corruption ravaging the Commission, the anti-corruption legislations in Nigeria should be amended to attract life sentence against offenders, and the proceeds of crime of corruption returned with 50% interest.
6. Furthermore, the Commission should be populated with Nigerians with good character, integrity and requisite will to implement the provisions of the Act dispassionately for the general public interest and good of the Niger Delta people.
7. There should be regular stakeholders engagement and public participation between the commission and the beneficiary communities of projects from the conceptualization to implementation stages, to elicit the co-operation of the youths and the entire community and forestall instances of project disruptions and vandalization.
8. Every beneficiary community should constitute a project implementation monitoring committee whose duties shall be to ensure that projects are not only executed by the contractor but done according to specification. This will entrench the culture of quality control and assurance in project implementation in beneficiary communities which would ensure that the humongous project sums expended by the Commission worth their while.
9. The present Federal Government led by Tinubu should summon the political will to recover all looted sums as revealed in the Forensic Audit Report and bring the culprits to book.